None of the comments provide any information or express any views that the Commission had not already considered in issuing its Policy Statement and the proposed rule. Accordingly, the Commission has determined to issue the proposed rule with no changes. The rule provides that, in general, all provisions of any existing administrative order will automatically sunset 20 years from the date that the order was issued.[5] The rule establishes an exception, however, where a federal court complaint alleging a violation of an existing order was filed (with or without an accompanying consent decree) within the last 20 years, or where such a complaint is subsequently filed with respect to an existing order that has not yet expired. In that event, the order will run for another 20 years from the date that the most recent complaint was or is filed with the court, unless the complaint was or is dismissed, or the court has ruled or rules that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed (or was or is upheld on appeal). The Commission's order will remain in effect while the court complaint and any appeal is pending.

The filing of a court complaint will not affect the duration of an order's application to any respondent that is not named as a defendant in the complaint. The issuance of this rule does not affect the Commission's ability to consider whether a complaint alleging order violations has ever been filed against a respondent, and any other relevant circumstances, in determining whether to grant or deny a subsequent petition by a respondent to reopen and set aside an order on the basis of changes in law, fact, or the public interest. *See* Commission Rule 2.51, 16 CFR 2.51.

Regulatory Flexibility Act

On the basis of information currently available to the Commission, it is anticipated that the rule will result in the elimination of a substantial number of existing orders that no longer serve the public interest. Many of the comments supporting the issuance of the rule state that it will reduce costs and stimulate competition. Accordingly, the Commission has determined at this time that the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis, because the rule will not have a significant impact on a substantial number of small entities within the meaning of the Act. 5 U.S.C. § 605. This notice serves as certification to that effect for purposes of the Small Business Administration.

Effective Date

The rule will take effect on January 2, 1996. Petitions to stay, in whole or in part, the termination of an order pursuant to the rule shall be filed pursuant to Commission Rule 2.51, 16 CFR 2.51. In the case of orders that have been in effect for at least 20 years, the rule provides respondents with 30 days to file such a petition before the order is automatically terminated by the rule. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure, Claims, Equal access to justice, Lawyers.

Accordingly, the Federal Trade Commission amends Title 16, Chapter I, Subchapter A, of the Code of Federal Regulations as follows:

PART 3—[AMENDED]

1. The authority for Part 3 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 3.72 is amended by adding a new paragraph 3.72(b)(3) to read as follows:

§ 3.72 Reopening.

* * * * *

(b) * * *

(3) *Termination of existing orders.* (i) *Generally.* Notwithstanding the foregoing provisions of this rule, and except as provided in paragraphs (b)(3)(ii) and (iii) of this section, an order issued by the Commission before August 16, 1995, will be deemed, without further notice or proceedings, to terminate 20 years from the date on which the order was first issued, or on January 2, 1996, whichever is later.

(ii) *Exception.* This paragraph applies to the termination of an order issued before August 16, 1995, where a complaint alleging a violation of the order was or is filed (with or without an accompanying consent decree) in federal court by the United States or the Federal Trade Commission while the order remains in force, either on or after August 16, 1995, or within the 20 years preceding that date. If more than one complaint was or is filed while the order remains in force, the relevant complaint for purposes of this paragraph will be the latest filed complaint. An order subject to this paragraph will terminate 20 years from the date on which a court complaint described in this paragraph was or is filed, except as provided in the following sentence. If the complaint was or is dismissed, or a federal court rules or has ruled that the respondent did not violate any provision of the order, and the dismissal or ruling was or is not appealed, or was or is upheld on appeal, the order will terminate according to paragraph (b)(3)(i) of this section as though the complaint was never filed; provided, however, that the order will not terminate between the date that such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal. The filing of a complaint described in this paragraph will not affect the duration of any order provision that has expired, or will expire, by its own terms. The filing of a complaint described in this paragraph also will not affect the duration of an order's application to any respondent that is not named in the complaint.

(iii) *Stay of Termination.* Any party to an order may seek to stay, in whole or part, the termination of the order as to that party pursuant to paragraph (b)(3)(i) or (ii) of this section. Petitions for such stays shall be filed in accordance with the procedures set forth in § 2.51 of these rules. Such petitions shall be filed on or before the date on which the order would be terminated pursuant to paragraph (b)(3)(i) or (ii) of this section. Pending the disposition of such a petition, the order will be deemed to remain in effect without interruption.

(iv) *Orders not terminated.* Nothing in § 3.72(b)(3) is intended to apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 95–28554 Filed 11–27–95; 8:45 am]

BILLING CODE 6750–01–P

60 FR at 42572.

[5] Orders that are 20 years old or older will sunset on January 2, 1996. Certain provisions in existing administrative orders will expire, or have already expired, according to their own terms, and the rule will not affect the duration of those provisions. The rule also will not revive any order provision that the Commission has previously reopened and set aside. *See* 16 CFR 2.51 & 3.72. The rule will not apply to *in camera* orders or other procedural or interlocutory rulings by an Administrative Law Judge or the Commission.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 95–98]

RIN 1515–AB50

North American Free Trade Agreement—Submission of Certificates of Eligibility for Textile and Apparel Goods Under the Tariff Preference Level Provisions

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: On June 20, 1994, T.D. 94–52 was published in the Federal Register (59 FR 31519) setting forth an interim amendment to § 12.132 of the Customs Regulations to require submission of a Certificate of Eligibility in connection with the entry of non-originating textile and apparel goods from Canada or Mexico for which preferential tariff treatment is claimed under the tariff preference level provisions of the North American Free Trade Agreement (NAFTA). The interim amendment to § 12.132 contained in T.D. 94–52 was adopted as a final rule without change on September 6, 1995, in T.D. 95–68 (60 FR 46334) which set forth final regulations implementing the NAFTA. This document discusses the public comments submitted in response to T.D. 94–52 and makes one clarifying change to the regulatory text.

EFFECTIVE DATE: November 28, 1995.

FOR FURTHER INFORMATION CONTACT: Dick Crichton, Office of Strategic Trade (202–927–0162).

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1992, the United States, Canada and Mexico entered into the North American Free Trade Agreement (NAFTA), one of the principal purposes of which is to eliminate tariff and other barriers to trade in, and facilitate the cross-border movement of, goods and services between the territories of the countries. The provisions of the NAFTA were adopted by the United States with the enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. On December 30, 1993, Customs published in the Federal Register (58 FR 69460) T.D. 94–1 setting forth interim amendments to the Customs Regulations to implement the Customs-related aspects of the NAFTA. Those interim regulations took effect on January 1, 1994, to coincide with the entry into force of the NAFTA.

The centerpiece of the NAFTA involves the granting of preferential tariff (duty-free or reduced-duty) treatment on goods imported into a NAFTA country from another NAFTA country. As a general rule, such preferential tariff treatment may only be accorded to goods that satisfy the rules of origin standards set forth in Chapter Four of the NAFTA; such goods are referred to as ''originating'' goods for NAFTA purposes. The NAFTA Chapter Four rules of origin are set forth in section 202 of the Act which is codified at 19 U.S.C. 3332.

Under Chapter Three of the NAFTA, Appendix 6.B. to Annex 300–B provides for an exception to the general rule regarding the granting of NAFTA preferential tariff treatment only to originating goods. This exception concerns specified textile and apparel goods which, because of the origin of the materials used to produce the goods in a NAFTA country and/or the nature of the processing used to produce the goods in a NAFTA country, do not meet the Chapter Four rules of origin standards and thus do not qualify as originating goods under the NAFTA. For such non-originating goods, Appendix 6.B. to Annex 300–B provides that they may nevertheless be granted preferential tariff treatment (that is, the duty-free or reduced-duty treatment that would be accorded to the same type of good when it qualifies as an originating good) up to specified annual quantitative ''tariff preference levels'' (TPLs). Once a TPL applicable to a NAFTA country's exports to another NAFTA country has been reached, any further exports of goods of that TPL category to the same NAFTA country during that year may not be accorded NAFTA preferential tariff treatment but rather will be subject to duty at the most-favored-nation rate. The TPL quantitative limits are set forth by category in Schedules 6.B.1. through 6.B.3. of Annex 300–B with reference to imports into each NAFTA country from each of the other NAFTA countries. For U.S. import purposes, the TPL provisions of Appendix 6.B. and Schedules 6.B.1. through 6.B.3. are also set forth in Additional U.S. Notes 3 through 6 to Section XI, HTSUS.

The basic procedures for filing a claim for NAFTA preferential tariff treatment, set forth in § 181.21 of the NAFTA implementing regulations (19 CFR 181.21), are generally applicable in the case of goods for which preferential tariff treatment is sought under the TPL provisions described above. However, there is one principal exception to those procedures as regards goods to which Appendix 6.B. to Annex 300–B applies: as stated in paragraph (a) of that section, there is no requirement that the written declaration (which constitutes the claim for preferential tariff treatment) be based on a Certificate of Origin in the possession of the importer. This exception is necessary because a NAFTA Certificate of Origin has reference only to originating goods (that is, goods which comply with the Chapter Four rules of origin standards) and thus does not cover TPL goods which are, by definition, not originating goods.

Following the publication of T.D. 94–1 and the entry into force of the NAFTA, representatives of the United States, Canada and Mexico continued to have discussions regarding whether additional requirements or procedures should be adopted for purposes of administering the provisions of Annex 300–B of the NAFTA. As a result of those discussions, Canada and Mexico decided on, and implemented, use of a Certificate of Eligibility as the means for monitoring and identifying export shipments eligible for preferential tariff treatment pursuant to the TPL provisions of Appendix 6.B. to Annex 300–B of the NAFTA (no corresponding Certificate of Eligibility has been adopted for purposes of U.S. exports to Canada and Mexico). The Certificate of Eligibility, signed by an authorized official of the Canadian or Mexican government, is issued to the Canadian or Mexican exporter for transmittal to the importer of the goods who then is able to make a claim for preferential tariff treatment based on the Certificate of Eligibility. The United States, Canada and Mexico agreed that presentation of a properly completed and executed Certificate of Eligibility for Canadian and Mexican exports is a prerequisite to the granting of a claim for preferential tariff treatment under the TPL provisions, and failure to present such a Certificate of Eligibility will result in assessment of duty at the most-favored-nation (that is, non-NAFTA) rate. In furtherance of this agreement, Customs implemented the procedure of granting claims for preferential tariff treatment on TPL goods imported from Canada or Mexico only if a properly completed and executed Certificate of Eligibility pertaining to the goods is presented to Customs when the claim is made.

In order to reflect the procedures agreed to by the three countries and implemented by Customs with regard to Canadian and Mexican exports, on June 20, 1994, Customs published T.D. 94–52 in the Federal Register (59 FR 31519) for purposes of amending, on an interim basis, § 12.132 of the Customs

Regulations (19 CFR 12.132), which had been adopted as an interim regulation in T.D. 94–4 discussed above, to require submission of a Canadian or Mexican Certificate of Eligibility in connection with a claim for preferential tariff treatment on goods covered by the NAFTA TPL provisions. Although the interim regulation took effect on the date of publication, T.D. 94–52 prescribed a public comment period which closed on August 19, 1994.

The interim NAFTA regulations set forth in T.D. 94–1 and the interim amendment to § 12.132 set forth in T.D. 94–52 were adopted as a final rule in T.D. 95–68 which was published in the Federal Register on September 6, 1995 (60 FR 46334). Although T.D. 95–68 republished the entire text of interim § 12.132 (that is, the original text contained in T.D. 94–1 as amended by T.D. 94–52), the **SUPPLEMENTARY INFORMATION** portion of T.D. 95–68 stated that Customs would publish a separate document to specifically address T.D. 94–52, including any public comments submitted in response thereto.

Discussion of Public Comments

Three comments were received in response to the interim regulation set forth in T.D. 94–52.

Two of these commenters were primarily concerned with the ability to file a claim after importation and whether or not there would be a sufficient time period to make such a claim, particularly when the U.S. importer is unable to obtain and provide a Certificate of Eligibility at the time of entry.

While a failure to supply the required Certificate of Eligibility will preclude the filing of a claim for preferential tariff treatment and will result in liquidation of the entry at the non-preferential duty rate, Customs believes that importers in most cases will have adequate opportunity, following the date of entry, to submit the Certificate and make the claim when the Certificate is not available at the time of entry. Customs notes in this regard that the importer may supply the necessary documentation and make the claim either at any time prior to final liquidation or in connection with the filing of a protest within 90 days following final liquidation. Moreover, under existing procedures, liquidation is delayed for a minimum of 90 days following the date of entry. Thus, an importer has at least 180 days from the date of entry in which to file a claim through submission of the required Certificate of Eligibility. In addition, on a case-by-case basis, Customs may grant an importer's request for a delay in liquidation so as to afford the importer additional time to submit the Certificate and make the claim if the request explains the reason for the delay in providing the Certificate.

With specific reference to the requirement in § 12.132(b) that the Certificate of Eligibility ''shall be presented to Customs at the time the claim for preferential tariff treatment is filed under § 181.21 of this chapter'', the third commenter objected to adoption of the interim rule with an immediate effective date. This commenter stated that the rule should only be implemented after sufficient notice and opportunity for comment are provided to the importing public in accordance with the requirements of the Administrative Procedure Act (APA), arguing that T.D. 94–52 did not set forth an adequate basis for dispensing with the normal APA advance notice and delayed effective date procedures.

Customs believes that T.D. 94–52 set forth an adequate justification, consistent with the provisions of the APA, for dispensing with the normal advance notice, comment and delayed effective date requirements of the APA. T.D. 94–52 specifically cited the foreign affairs function exception to application of the normal APA rulemaking procedures. To the extent that this commenter believes that the failure to provide for a delayed effective date limits the opportunity to obtain preferential tariff treatment on TPL goods that could be the subject of a claim at the time of entry but for the absence of a Certificate of Eligibility, Customs would point out that, as explained in the response to the two other commenters set forth above, there are alternative procedures that may be followed to ensure that such treatment is nevertheless accorded to the goods when the Certificate of Eligibility cannot be presented until after the date of entry.

Customs notes that the last sentence of paragraph (b) of § 12.132, which states that ''[f]ailure to timely submit the required Certificate of Eligibility will result in a denial of the claim'', could be taken to imply that a claim for preferential tariff treatment on TPL goods may be made without simultaneous presentation of the Certificate to Customs. Such a conclusion would be inconsistent with the wording and intent of the preceding paragraph (b) text as discussed above in connection with the public comments. Accordingly, in order to avoid any ambiguity on this point, this document amends § 12.132 by removing the last sentence of paragraph (b).

Inapplicability of Notice and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this final regulation because it is within the foreign affairs function of the United States. The amendment contained in this document is consistent with procedures agreed to and implemented by the United States, Canada, and Mexico. In addition, because this amendment does not involve a substantive change but rather merely clarifies existing procedures for claiming a tariff preference under the NAFTA, it is determined pursuant to 5 U.S.C. 553(b)(B), that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date.

Executive Order 12866

Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Canada, Customs duties and inspection, Marking, Mexico, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

Amendment to the Regulations

Accordingly, for the reasons set forth above, Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

§ 12.132 [Amended]

2. In § 12.132, paragraph (b) is amended by removing the last sentence.

Approved: October 24, 1995.

George J. Weise,

Commissioner of Customs.

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–29001 Filed 11–27–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–94–094]

RIN 2115–AE47

Drawbridge Operation Regulations; Merrimack River, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating rules governing the Newburyport US1 Bridge at mile 3.4, over the Merrimack River in Newburyport, Massachusetts, by requiring a one hour advance notice for openings during the winter months. This rule is being changed because the waterway is often frozen during the winter and there have been few requests for bridge openings. This will relieve the bridge owner of the burden of posting personnel at the bridge during the winter months.

EFFECTIVE DATE: December 28, 1995.

ADDRESSES: Documents referred to in this preamble are available for copying and inspection at the First Coast Guard District, Bridge Branch office located in the Captain John Foster Williams Federal Building, 408 Atlantic Ave., Boston, Massachusetts 02110–3350, room 628, between 6:30 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT:

John W. McDonald, Project Manager, Bridge Branch, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this final rule are Mr. John W. McDonald, Project Officer, Bridge Branch, and Lieutenant Commander Samuel R. Watkins, Project Counsel, District Legal Office.

Regulatory History

On December 12, 1994 the Coast Guard published a notice of proposed rulemaking entitled ''Drawbridge Operation Regulations; Merrimack River, Massachusetts'' in the Federal Register (59 FR 63944). The Coast Guard received no comments on the notice of proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Newburyport US1 Bridge over the Merrimack River in Newburyport, Massachusetts has a vertical clearance of 35′ above mean high water (MHW) and 42′ above mean low water (MLW). The Merrimack River is frozen during most of the winter and there have been few requests for bridge openings during this period. The previous rule required the bridge to open on signal from May 1 to October 31, 6 a.m. to 10 p.m. This final rule will extend the period during which the bridge will open on signal: from May 1 to November 15, from 6 a.m. to 10 p.m. This final rule will require at least a one hour advance notice for openings at all other times.

Discussion of Comments and Changes

The Coast Guard received no comments on the notice of proposed rulemaking. Therefore, no changes to the proposed rule were made.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that this rule will not prevent mariners from passing through the Newburyport US1 Bridge, but will only require mariners to plan their transits.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000. Because of the reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under paragraph 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.605 is amended by revising paragraph (a) to read as follows:

§ 117.605 Merrimack River.

(a) The draw of Newburyport US1 Bridge, mile 3.4, shall open on signal from May 1 through November 15, from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least one hour advance notice is given by calling the number posted at the bridge.

* * * * *